

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	
Benton/Linn Wireless, LLC)	CC Docket No. 96-45
Petition for Waiver of Section 54.307(c))	
of the Commission's Rules)	
)	
Highland Cellular, Inc.)	
Petition for Waiver of Sections)	
54.307(c), 54.802(a), and 54.809(c))	
of the Commission's Rules)	
)	
Louisa Communications, LLC)	
Petition for Waiver of Section 54.802(a))	
of the Commission's Rules)	
)	
Nebraska Technology & Telecommunications)	
Petition for Waiver of Section 54.802(a))	
of the Commission's Rules)	
)	
Northeast Iowa Telephone Company)	
Petition for Waiver of Section 54.307(c))	
of the Commission's Rules)	
)	
United States Cellular Corporation)	
Petition for Waiver of Section 54.307(c))	
of the Commission's Rules)	
)	
Unity Telephone Company d/b/a UniTel, Inc.)	
Petition for Waiver of Section 54.904(d))	
of the Commission's Rules)	
)	
Wapsi Wireless, LLC)	
Petition for Waiver of Section 54.307(c))	
of the Commission's Rules)	

ORDER

Adopted: November 29, 2005

Released: November 29, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant eight separate requests for waiver, filed by eight eligible telecommunications carriers (ETCs) – Benton/Linn Wireless, LLC (Benton/Linn); Highland Cellular, Inc. (Highland); Louisa Communications, LLC (Louisa); Nebraska Technology & Telecommunications (NTT); Northeast Iowa Telephone Company (Northeast Iowa); United States Cellular Corporation (USCC); Unity Telephone Company (UniTel); and Wapsi Wireless, LLC (Wapsi) (collectively “the petitioners”) – of certain quarterly and annual filing deadlines required for high-cost universal service support, set forth in sections 54.307, 54.802, 54.809, and 54.904 of the Federal Communications Commission’s (Commission’s) rules.¹ We find that the petitioners have demonstrated that special circumstances warrant these waivers, and we direct USAC to disburse the petitioners’ support for the relevant periods.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”² Once a carrier is designated as an ETC, other requirements also must be satisfied before a carrier can begin receiving interstate access support (IAS), interstate common line support (ICLS), and other high-cost universal service support. Section 254(e) requires that support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”³ To implement this statutory requirement, the Commission has adopted annual certification and data filing requirements.⁴

3. To receive IAS pursuant to section 54.809 of the Commission’s rules, an ETC must file an annual certification with the Universal Service Administrative Company (USAC) and the Commission stating that all IAS received by the ETC will be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”⁵ A carrier’s certification must be filed on the date the carrier first files its line count data information with USAC, and thereafter on June 30 of each

¹ See Benton/Linn Wireless, LLC Petition for Waiver of Section 54.307(c) of the Commission’s Rules, CC Docket No. 96-45, filed June 9, 2004 (Benton/Linn Petition); Highland Cellular, Inc. Petition for Waiver of Section 54.802, 54.809(c), and 54.307(c) of the Commission’s Rules, CC Docket No. 96-45, filed Jan. 17, 2003 (Highland Petition); Louisa Communications, LLC Petition for Waiver of Section 54.307(b) of the Commission’s Rules, CC Docket No. 96-45, filed Jan. 12, 2004 (Louisa Petition); Nebraska Technology & Telecommunications Petition for Waiver of Section 54.802(a) of the Commission’s Rules, CC Docket No. 96-45, filed July 19, 2005 (NTT Petition) (NTT’s petition was dated November 29, 2004 but was not received by the Commission’s Office of the Secretary until July 19, 2005); Northeast Iowa Telephone Company Petition for Waiver of Section 54.307(c) of the Commission’s Rules, CC Docket No. 96-45, filed July 27, 2004 (Northeast Iowa Petition); United States Cellular Corporation Petition for Waiver of Section 54.307(c) of the Commission’s Rules, CC Docket No 96-45, filed Apr. 2, 2004 (USCC Petition); Unity Telephone Company d/b/a Unitel, Inc. Petition for Waiver of Section 54.904(d) of the Commission’s Rules, CC Docket No 96-45, filed Feb. 17, 2005 (UniTel Petition); and Wapsi Wireless, LLC Petition for Waiver of Section 54.307(b) and (c) of the Commission’s Rules, CC Docket No 96-45, filed Apr. 13, 2005 (Wapsi Petition) (Wapsi’s petition was dated February 8, 2005 but was not received by the Commission’s Office of the Secretary until April 13, 2005). See also 47 C.F.R. §§ 54.307(c), 54.802(a), 54.809(c), and 54.904(d).

² 47 U.S.C. § 254(e). Section 214(e) of the Act provides that state commissions shall designate carriers as ETCs. 47 U.S.C. § 214(e).

³ 47 U.S.C. § 254(e).

⁴ See 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.802, 54.809, 54.903.

⁵ 47 C.F.R. § 54.809(a).

year.⁶ In addition, an ETC that is providing service within an area served by a price cap local exchange carrier must file line count data on a quarterly basis, pursuant to section 54.802 of the Commission's rules.⁷ Line count data are due on the last business day of March, June, September, and December of each year.⁸ USAC uses line count data filed in December to calculate first quarter support for the following calendar year, line count data filed in March to calculate second quarter support for the current year, line count data filed in June to calculate third quarter support for the current year, and line count data filed in September to calculate fourth quarter support for the current year.

4. Similarly, to receive ICLS pursuant to section 54.904 of the Commission's rules, an ETC must file a certification, stating that all ICLS received by it will be used only for the provision, maintenance, and upgrading of facilities and services for which such support is intended, with USAC and the Commission on the date that it first files its line count information and thereafter on June 30 of each year.⁹ In addition, pursuant to section 54.307 of the Commission's rules, a competitive LEC designated as an ETC must file with USAC, no later than July 31, September 30, December 30, and March 30 of each year, working line count data for the previous December 31, March 31, June 30, and September 30, respectively, in order to receive ICLS and other forms of high-cost support for those quarterly periods.¹⁰

5. Waiver Standard. Generally, the Commission's rules may be waived for good cause shown.¹¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹³ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public

⁶ See 47 C.F.R. §54.809(c). In *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6413-14, para. 94 (2005), the Commission adopted a quarterly IAS certification schedule to accommodate late filings, whereby a late-filing carrier's IAS support is curtailed by a quarter's worth of support for each quarter that the certification is untimely. See also *id.* at 6421 (revising 47 C.F.R. §54.809(c) to reflect this new treatment of late-filed IAS certifications).

⁷ See 47 C.F.R. § 54.802(a).

⁸ *Id.*; see *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13060, para. 227 (2000), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Public Utility Counsel*, 265 F.3d 313 (5th Cir. 2001).

⁹ See 47 C.F.R. §§ 54.904(a) and (d). In the *MAG Order*, the Commission adopted a mechanism for accepting an untimely filed ICLS certification, whereby the carrier does not become eligible for ICLS until the second calendar quarter after the certification is untimely filed. See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19688, para. 176 (2001) (*subsequent history omitted*) (*MAG Order*).

¹⁰ 47 C.F.R. § 54.307(c). ICLS supports interstate common line costs with explicit support that is available to all ETCs. See *MAG Order*, 16 FCC Rcd at 19667, para. 128. See also 47 C.F.R. §§ 54.901-904.

¹¹ 47 C.F.R. § 1.3.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

¹³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

interest.¹⁴ Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹⁵

III. PETITIONS SEEKING WAIVER BASED ON MISUNDERSTANDING OF COMMISSION DEADLINE RULES

A. Background

6. Highland's Petition for Waiver. On January 17, 2003, Highland filed a request for waiver of the June 30 and September 30 quarterly filing deadlines in section 54.802, and the July 31 and September 30 filing deadlines in section 54.307, so it can receive, respectively, IAS for third quarter 2002 and fourth quarter 2002, and high-cost support for the fourth quarter 2002 and first quarter 2003.¹⁶ The West Virginia Commission designated Highland as an ETC in areas served by non-rural carriers in West Virginia on May 30, 2002,¹⁷ and on June 28, 2002, Highland mailed to USAC its initial interstate access line count data and its initial annual certification.¹⁸ USAC did not receive Highland's line count data and certification until July 1, 2002 – one day after the line count filing deadline.¹⁹ On July 31 and September 30, 2002, Highland mailed its next quarterly filings of high-cost and interstate access line count data, respectively, to USAC. These filings also were received by USAC after the filing deadline.²⁰ In its petition, Highland claims that it did not realize that the submissions were required to be received by USAC by the due dates, instead of mailed by the due dates, until it did not receive its expected IAS and high-cost model support in December 2002.²¹

7. Northeast Iowa's Petition for Waiver. On July 27, 2004, Northeast Iowa requested a waiver of the filing deadline in section 54.307(c) of the Commission's rules,²² so that it can receive high-cost support for the second quarter 2004. On December 29, 2003, Northeast Iowa mailed its high-cost loop, local switching support, and long-term support line counts, ICLS Form 507, and IAS line count report to USAC in one envelope.²³ This filing was received by USAC on December 31, 2003 – one day after the deadline.²⁴ When Northeast Iowa determined in July 2004 that it had not received the full amount of high-cost support to which it believed it was entitled, it was informed by USAC that its fourth quarter 2003 filing was not received by the filing date.²⁵ In its petition, Northeast Iowa explains that its general manager was on vacation from December 22 through January 3. In his absence, administrative

¹⁴ *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁶ See Highland Petition at 1-3; 47 C.F.R. §§ 54.307(c), 54.802(a).

¹⁷ See *Highland Cellular, Inc., Petition for Consent and Approval to be Designated as an Eligible Telecommunications Carrier*, Recommended Decision, Case No. 01-1604-T-PC (W. Va. Comm'n May 10, 2002); *id.*, Final Order (W. Va. Comm'n May 30, 2002).

¹⁸ See Highland Petition at 2.

¹⁹ See *id.*

²⁰ See Highland Petition at 3.

²¹ See *id.*

²² See Northeast Iowa Petition at 1.

²³ The Iowa Utilities Board designated Northeast Iowa as an ETC in the state of Iowa on April 26, 2002. See *Iowa Wireless Services L.P. and Associated Companies*, Order Designating Eligible Carriers, Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. Apr. 26, 2002) (*Iowa Utilities Board Order*).

²⁴ See Northeast Iowa Petition at 1.

²⁵ See *id.* at 1-2.

staff sent the filing “in an expedited manner” on December 29, but failed to send it using an overnight delivery method. As a result, its filing was received after the December 30, 2003 filing date for all high-cost support and ICLS data.²⁶

8. *Benton/Linn’s Petition for Waiver.* On June 9, 2004, Benton/Linn requested a waiver of the filing deadline in section 54.307(c) of the Commission’s rules,²⁷ so that it can receive high-cost support for third quarter 2004. On March 30, 2004, Benton/Linn mailed its high-cost loop, local switching support, and long-term support line counts, ICLS Form 507, and IAS line count report to USAC in one envelope.²⁸ This filing was received by USAC on March 31, 2004, one day past the March 30, 2004 filing date for all high-cost support and ICLS data.²⁹ In its petition, Benton/Linn states that a relocation of its offices around the time that the filings were due hampered its ability to retrieve all the records it needed for the filing.³⁰

9. *NTT’s Petition for Waiver.* On July 19, 2005, NTT requested a waiver of the September 30 filing deadline in section 54.802(a) of the Commission’s rules so that it can receive support for the fourth quarter 2004.³¹ NTT’s quarterly interstate access line count data for the period covering April through June of 2004 was postmarked on September 29, 2004.³² The filing, however, was not received by USAC by the September 30, 2004 filing deadline.³³ NTT seeks a waiver because it believed that the filing merely had to be postmarked by September 30.³⁴

B. Discussion

10. We find that Highland, Northeast Iowa, Benton/Linn and NTT have demonstrated that good cause exists to waive the Commission’s rules in order to allow receipt of universal service IAS, ICLS and high-cost support for the quarters and years in question. Specifically, we grant Highland’s petition for waiver of sections 54.307(c), 54.802(a) and 54.809(c)³⁵ of the Commission’s rules, Northeast Iowa and Benton/Linn’s petitions for waiver of section 54.307(c) of the Commission’s rules, and NTT’s petition for waiver of section 54.802(a) of the Commission’s rules.

²⁶ *Id.* See also 47 C.F.R. § 54.307(c). The filing, however, was received by the December 31, 2003 IAS filing deadline. See Northeast Iowa Petition at 1; 47 C.F.R. § 54.802(a).

²⁷ See Benton/Linn Petition at 1.

²⁸ The Iowa Utilities Board designated Benton/Linn as an ETC in the state of Iowa on April 26, 2002. See *Iowa Utilities Board Order*; Benton/Linn Petition at 1.

²⁹ See Benton/Linn Petition at 1-2. See also 47 C.F.R. § 54.307(c). The filing, however, was received by the March 31, 2004 IAS filing deadline. See Benton/Linn Petition at 1; see also 47 C.F.R. § 54.802(a).

³⁰ See Benton/Linn Petition at 2.

³¹ See NTT Petition at 1.

³² The Nebraska Public Service Commission designated NTT as an ETC in the state of Nebraska on October 4, 2001. See *Application of Nebraska Technology & Telecommunications, Inc., Omaha, Seeking Designation as an Eligible Telecommunications Carrier that May Receive Universal Service Support*, Order Granting Designation as an Eligible Telecommunications Carrier, Application No. C-2528 (Neb. PSC Oct. 4, 2001).

³³ See NTT Petition at 1.

³⁴ See *id.*

³⁵ Pursuant to section 54.809(c), Highland’s initial annual IAS certification was not untimely since it was filed at the time of its initial interstate line count data submission. See 47 C.F.R. § 54.809(c). All annual certifications thereafter, however, must be filed on June 30 of each year. *Id.*

11. Sections 54.307 and 54.802 of the Commission's rules require each ETC to "submit" line count data by the deadline.³⁶ Highland and NTT assert that they believed that these rules were satisfied if the filings were postmarked by the due date.³⁷ Section 1.7 of the Commission's rules, however, clarifies that "pleadings and other documents are considered to be filed with the Commission *upon their receipt*."³⁸ Because USAC processes such a large amount of data each year, it is necessary to require carriers to meet filing deadlines absent special circumstances. Furthermore, it is the responsibility of the ETC to review and understand the rules so that it is in a position to ensure that its submissions are filed in a timely manner.³⁹

12. In these circumstances, however, we find that strict enforcement of the rules is not in the public interest. The filings of all the petitioners were received within two business days of the due date.⁴⁰ Therefore, the late filings did not impair the administration of the USF. Furthermore, these carriers have taken steps to ensure that they will not file late in the future.⁴¹ We note that these carriers believed that they were filing on time. We emphasize that it is each carrier's responsibility to ensure that USF line count and certification filings are *received* by the due date in the appropriate places, regardless of the time or method of filing. Given the options that are now available for filing, we doubt circumstances as described by these petitioners will be considered "special circumstances" in the future.⁴²

IV. PETITIONERS SEEKING WAIVER BASED ON THIRD-PARTY ERROR

A. Background

13. Louisa's Petition for Waiver. On January 12, 2004, Louisa filed a request for waiver of the December 30 quarterly filing deadline in section 54.802 of the Commission's rules for interstate

³⁶ See 47 C.F.R. § 54.307(c) (requiring that ETCs "submit" line count data by each July 31, September 30, December 30, and March 30); 47 C.F.R. § 54.802(a) (requiring that ETCs "submit to the Administrator, on a quarterly basis . . . line count data").

³⁷ See Highland Petition at 3; NTT Petition at 1. While Northeast Iowa and Benton/Linn do not claim they interpreted the rule to mean filings had to be postmarked by the deadline, they both acted as if they thought their filings would be on time as submitted.

³⁸ 47 C.F.R. § 1.7 (emphasis added). Section 1.7 of the Commission's rules applies generally to all documents filed with the Commission unless specifically noted otherwise. 47 C.F.R. § 1.7.

³⁹ We note that early this past summer, the Commission released a Notice of Proposed Rulemaking seeking comment on ways to improve the management, administration, and oversight of the Universal Service Fund (USF). See *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Lifeline and Link-Up*, WC Docket No. 03-109, *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*USF Administration NPRM*). Among the issues on which the Commission sought comment are filing deadlines. See *id.* at 11328-30, paras. 47-51. The Commission may further clarify its deadlines in the course of that proceeding.

⁴⁰ See, e.g., Northeast Iowa Petition at 1; Benton/Linn Petition at 1; Highland Petition at 2, 4. Highland was not notified by USAC that its initial filing was deemed late, so it had no opportunity to correct the untimeliness of its later filings. See Highland Petition at 4.

⁴¹ See, e.g., Benton/Linn Petition at 3, Northeast Iowa Petition at 3 (each asserting that it has implemented a tracking system to ensure timely filing, including the use of an outside firm to monitor its meeting future filing requirements); Highland Petition at 4.

⁴² See *infra*. para. 20.

access line count data, so that it can receive IAS for the first quarter 2004.⁴³ In its petition, Louisa asserts that it mailed its quarterly interstate access line count data to USAC on December 23, 2003, but that USAC did not receive Louisa's submission until January 5, 2004, six days after the December 30 line count filing deadline.⁴⁴ Subsequently, USAC notified Louisa that it did not receive its interstate access line count data by December 30.⁴⁵ Louisa requests a waiver in light of the unusual U.S. mail delay that caused its filing to arrive late.⁴⁶

14. *USCC's Petition for Waiver.* On April 2, 2004, USCC filed a petition for waiver of the September 30 ICLS line count data filing deadline in section 54.307(c) of the Commission's rules, so that it can receive ICLS for the first quarter 2004 for the states of Iowa, Washington, and Wisconsin.⁴⁷ On September 29, 2003, USCC mailed its Washington, Iowa, and Wisconsin high-cost and IAS line count data to USAC via UPS overnight service, and also mailed its ICLS line count data to USAC's consultant in Harrisburg, Pennsylvania.⁴⁸ The ICLS line count data, however, was incorrectly routed at a UPS facility and was mistakenly delivered to the Dallas-Fort Worth Airport on September 30, 2003. Thus, the data was not received in Harrisburg until October 1, 2003, one day after the September 30, 2003 filing deadline.⁴⁹ In its petition, USCC contends that it had no reason to believe that the Harrisburg filing had not been delivered on time, as UPS did not advise USCC of any problems.⁵⁰ USCC only became aware of the late filing when it noticed a shortfall in its USF payments in its February 27, 2004 high-cost statement from USAC.⁵¹

15. *UniTel's Petition for Waiver.* On February 17, 2005, UniTel filed a petition for waiver of the annual ICLS certification filing deadline in section 54.904(d) of the Commission's rules, so that it can receive ICLS for the period from July 2004 through February 2005.⁵² In its petition, UniTel recounts that

⁴³ See Louisa Petition at 1. In its petition, Louisa requests a waiver of section 54.307(b) of the Commission's rules. Louisa specifically requests waiver of the December 30, 2003 filing deadline for interstate access support. This deadline is codified in section 54.802(a) of the Commission's rules. Accordingly we will address Louisa's waiver request as a request for waiver of section 54.802(a) of the Commission's rules.

⁴⁴ See Louisa Petition at 1; 47 C.F.R. § 54.802(a). The Iowa Utilities Board designated Louisa as an ETC in areas served by non-rural carriers in Iowa on May 2, 2001. See *Louisa Communications, Inc.*, Order Designating Eligible Carrier, Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. June 19, 2001).

⁴⁵ See Louisa Petition at 1.

⁴⁶ See *id.*

⁴⁷ See USCC Petition at 1.

⁴⁸ See *id.* at 2-3. USCC provided copies of the cover letters to its ICLS filings and its UPS shipping receipts and tracking information. See *id.* at Attachments B-E. USCC is designated as an ETC in Washington, Iowa, and Wisconsin. See *id.* at 2; *Petitions For Designation as Eligible Telecommunications Carriers*, Order Designating Eligible Telecommunications Carriers, Docket Nos. UT-970333-970354 and UT-970356, (Wash. Util. and Transp. Comm'n Dec. 23, 1997); *U.S. Cellular Corp.*, Order Granting Request for Eligible Telecommunications Carrier Status, Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. Jan 15, 2002); *Application of United States Cellular Corp. for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Final Decision, Docket No. 8225-TI-102 (Wis. PSC Dec. 20, 2002).

⁴⁹ See USCC Petition at 3; 47 C.F.R. § 54.307(c). Beginning with the December 30, 2003 filings, USAC no longer required that filings be made to Harrisburg.

⁵⁰ See USCC Petition at 4.

⁵¹ See *id.*

⁵² See UniTel Petition at 1, 5.

on May 28, 2004, it mailed its annual ICLS certification to USAC and the Commission.⁵³ On the same day, UniTel faxed a copy of the certification to the National Exchange Carrier Association (NECA).⁵⁴ It was not until late December 2004, however, that UniTel was informed for the first time by NECA that USAC could not verify that it had received the 2004 ICLS certification on or before its June 30, 2004 due date.⁵⁵ After an unsuccessful search to verify that USAC or the Commission received the 2004 ICLS certification, UniTel resent the certification to USAC and the Commission on December 30, 2004.⁵⁶ UniTel maintains that its reliance on the U.S. Mail for the filing of its certification with USAC and the Commission was entirely reasonable, because it had mailed the certification 33 days prior to the deadline.⁵⁷

16. *Wapsi's Petition for Waiver.* On April 13, 2005, Wapsi filed a petition for waiver of the December 30 ICLS line count data filing deadline in section 54.307(c) of the Commission's rules, so that it can receive high-cost support, local switching support, and ICLS for the second quarter 2005.⁵⁸ On December 13, 2004, Wapsi sent to USAC its FCC Form 507 line count report via UPS "3 Day Select" delivery service.⁵⁹ UPS held the package as undeliverable at its Landover, Maryland, facility from December 16 to December 30, 2004, without notifying or contacting Wapsi. Thus, the Form 507 was not received by USAC by the December 30, 2004 filing deadline.⁶⁰ In its petition, Wapsi asserts that it did not become aware of any delivery problem until the package was returned to it undelivered by UPS on January 5, 2005. On January 6, Wapsi resent the Form 507 to USAC via fax and UPS "Next Day Air" delivery service.⁶¹

B. Discussion

17. Louisa, USCC, UniTel and Wapsi contend that their late filings were the result of errors made by third parties and were outside of their control. We find that the primary causes of these four carriers' filing delays were unusual and unforeseeable occurrences attributable to third parties, and we grant their requested waivers of the Commission's rules. Specifically, we grant Louisa's petition for waiver of section 54.802(a) of the Commission's rules, USCC and Wapsi's petitions for waiver of section 54.307(c) of the Commission's rules, and UniTel's petition for waiver of section 54.904(d) of the Commission's rules.

⁵³ See *id.* at 2. The Maine Public Utilities Commission designated UniTel as an ETC in the state of Maine on November 3, 1997. See *Unitel, Inc., Request for Designation as Eligible Telecommunications Carrier*, Order, Docket No. 97-479 (Maine PUC Nov. 3, 1997).

⁵⁴ See UniTel Petition at 3. UniTel provided copies of its fax transmission to NECA, the Fax "activity report" showing successful completion of the fax to NECA, and a letter dated Feb. 15, 2005, confirming NECA's receipt of the fax on May 28, 2004. See *id.* at Attachments E, F. UniTel is a participant in the NECA revenue and cost pooling process, whereby NECA functions as a clearinghouse for the receipt and disbursement of ICLS for its pool participants. As part of this process, NECA also sends a copy of pool participants' ICLS information to USAC. See *id.* at 3. See also *MAG Order*, 16 FCC Rcd at 19624, para. 20; 16 FCC Rcd at 19682, para. 162.

⁵⁵ See UniTel Petition at 1, 4; 47 C.F.R. § 54.904(d).

⁵⁶ See UniTel Petition at 4.

⁵⁷ See *id.* at 6-7.

⁵⁸ See Wapsi Petition at 2, 6.

⁵⁹ The Iowa Utilities Board designated Wapsi as an ETC in the state of Iowa on April 26, 2002. See Wapsi Petition at 3; *Iowa Utilities Board Order*.

⁶⁰ See Wapsi Petition at 1-7; 47 C.F.R. § 54.307(c).

⁶¹ See Wapsi Petition at 1-6. Wapsi provided copies of its misaddressed UPS shipping receipt and tracking information. See *id.* at Exhibits B-C.

18. Although our rules require that line count and certifications must be *received* by the deadline, we find here that all four of these carriers acted reasonably and in good faith in their attempts to ensure that their filings were received by the deadlines. The Commission has found that it generally does not grant waivers based on the failure of third-party couriers,⁶² stating that “although these circumstances may be unexpected, they are reasonably foreseeable and therefore applicants should allow enough time to meet cutoff deadlines to account for such unanticipated delays.”⁶³ Here, however, the applicants tried to account for delays by mailing the required data more than a month in advance, as UniTel did, 17 days in advance, as Wapsi did, and a week in advance, as Louisa did. Even given unexpected delays, mailing the data when they did should have ensured that the filings arrived on time. We find that such great delays, therefore, were not foreseeable.

19. Only USCC relied upon a third-party courier to transport the data overnight and therefore did not leave time for any delays. Like the petitions above where the carriers thought they were filing on time, we find that strict enforcement of the rules is not in the public interest.⁶⁴ Like Highland, Northeast Iowa and Benton/Linn, USCC’s filing arrived only one day late.⁶⁵ Therefore, the late filings did not impair the administration of the USF. In addition, in contrast to where the applicants were seeking to compete in the comparative hearing process for obtaining a radio license from the Commission, here no other party was prejudiced due to the late filing.⁶⁶

20. Furthermore, subsequent to the occurrence of the circumstances underlying these petitions, USAC updated its procedures to allow carriers to file by email or facsimile.⁶⁷ Carriers now have many options by which to file, including U.S. mail, other sources of commercial delivery, facsimile, and email, and we encourage them to use any and all methods they deem necessary to ensure their filings are timely received. For instance, all carriers receiving funding from the high-cost universal support mechanism are encouraged to make their filings via email at hcfilings@HCLI.universalservice.org to avoid future filing delays. Additional information regarding USAC’s filing procedures and deadlines can be found at <http://www.universalservice.org/hc/process/filingreq.asp>. Given the options that are now available for filing, we doubt circumstances as described by these petitioners will be considered “special circumstances” in the future.

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i),

⁶² See *Mary Ann Salvatoriello*, FCC 91-243, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4708, para. 23 (1991).

⁶³ *Id.* (quoting *FCC Overrules Caldwell Television Associates, Ltd.*, FCC 85-534, Public Notice, 58 RR2d 1706, 1707 (1985)).

⁶⁴ See *supra* para. 12.

⁶⁵ See USCC Petition at 3.

⁶⁶ But see *Mary Ann Salvatoriello*, 6 FCC Rcd at 4705, paras. 2-4. Furthermore, in that case, the subject applications were dismissed under the Commission’s particular “hard look” approach for processing of applications for commercial FM facilities. See *id.* at paras. 2-3.

⁶⁷ It also might help carriers if they could confirm when their filings were received. For example, if USAC would date-stamp filings if requested by carriers, the carriers would know in a timely manner whether their submissions were received, and can expeditiously cure the situation if they were not. We note that filing deadlines are among the issues on which the Commission sought comment in the *USF Administration NPRM*. See *id.*, 20 FCC Rcd at 11328-30, paras. 47-51. If necessary, the date-stamping of filings could be considered by the Commission in that proceeding in the context of other measures related to filing deadlines and the efficient administration of the USF.

155(c), 201, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, this *Order* IS ADOPTED.

22. IT IS FURTHER ORDERED that the petition for waiver of sections 54.307(c), 54.802(a) and 54.809(c) of the Commission's rules, 47 C.F.R. §§ 54.307(c), 54.802(a) and 54.809(c), filed by Highland Cellular, Inc., IS GRANTED, as described herein.

23. IT IS FURTHER ORDERED that the petition for waiver of sections 54.307(b) and 54.802(a) of the Commission's rules, 47 C.F.R. §§ 54.307(b) and 54.802(a), filed by Louisa Communications, LLC, IS GRANTED, as described herein.

24. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by United States Cellular Corporation, IS GRANTED, as described herein.

25. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by Benton/Linn Wireless, LLC, IS GRANTED, as described herein.

26. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by Northeast Iowa Telephone Company, IS GRANTED, as described herein.

27. IT IS FURTHER ORDERED that the petition for waiver of section 54.802(a) of the Commission's rules, 47 C.F.R. § 54.802(a), filed by Nebraska Technology & Telecommunications, Inc., IS GRANTED, as described herein.

28. IT IS FURTHER ORDERED that the petition for waiver of section 54.904(d) of the Commission's rules, 47 C.F.R. § 54.904(d), filed by Unity Telephone Company d/b/a UniTel, Inc., IS GRANTED, as described herein.

29. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(b) and (c) of the Commission's rules, 47 C.F.R. § 54.307(b) and (c), filed by Wapsi Wireless, LLC, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau